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## OFFICE OF PUBLIC INSTRUCTION

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Denise Juneau  
Superintendent

March 20, 2009

To: David Munson, Executive Director for Pupil Services

From: Bob Runkel, Acting Deputy Superintendent

Regarding: Maintenance of Fiscal Effort

This memorandum is in response to your request for a clarification regarding how the earmarked special education funds provided under the American Recovery and Reinvestment Act of 2009 (ARRA) will affect requirements for maintenance of fiscal effort under the Individuals with Disabilities Education Act (IDEA).

For purposes of determining maintenance of fiscal effort, special education federal funds provided under the ARRA that are earmarked for special education will be treated as increases in your district's IDEA allocation for fiscal year 2010. Federal law permits Part B applicants (in your case, the district) to reduce the level of expenditures otherwise required to maintain fiscal effort by up to 50% of the amount of increase in IDEA funds. In other words, with some caveats listed below, your district will be able to reduce district general fund expenditures on special education by up to 50% of difference between the fiscal year 2010 IDEA allocation and the fiscal year 2009 IDEA allocation.

Maintenance of fiscal effort is required when budgeting. That is, Part B applications cannot be approved unless the district budgets sufficient general funds for special education to meet maintenance of fiscal effort requirements. Expenditure reports are used to make final determination for maintenance of fiscal effort.

There are three caveats listed below.

- The amount of reduction in maintenance of fiscal effort that a Part B applicant can take is affected by the applicant's use of Part B funds for early intervening services. If your district chooses to, or is required to provide funds for early intervening services, the allowable reduction in maintenance of fiscal effort is reduced by a like amount.
  - Here's a sample calculation:

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| <ul style="list-style-type: none"><li>▪ Assume the district receives \$1 million in additional funding. Fifty percent of the increase in IDEA funds (FY10 amount minus FY09 amount times .5 equals \$500,000).</li><li>▪ Assume that 15% of your total Part B allocation equals \$300,000 and assume that you are required to spend this amount on early intervening services.</li><li>▪ Under this scenario, the maximum amount of reduction in fiscal effort is \$200,000 (\$500,000 minus \$300,000 equals \$200,000).</li><li>▪ If no IDEA funds are spent on early intervening services, the district may reduce maintenance of effort by \$500,000.</li></ul> |
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*"It is the mission of the Office of Public Instruction to improve teaching and learning through communication, collaboration, advocacy, and accountability to those we serve."*

- In certain limited circumstances, maintenance of fiscal effort can be achieved at levels that are even lower than the levels established solely through the reduction in fiscal effort achieved as a result of 50% of the increase in IDEA funds.
  - In some cases a Part B applicant may have allowable reductions including:
    - a decrease in enrollment of children with disabilities;
    - voluntary departure or retirement of special education personnel who are replaced with lower salaried staff;
    - the ending of a high cost program for a particular child; and/or
    - one-time-only expenditures from the prior year such as acquisition of equipment.
- Here are some additional items worth consideration:
  - We anticipate making ARRA funds available for expenditure as soon as we are able, perhaps as early as the month of May. Even though the application for ARRA funds will be considered a fiscal year 2010 allocation, districts will be able to spend funds provided under ARRA in fiscal year 2009 (assuming we will be able to get funds out quickly).
  - All of the maintenance of fiscal effort relief that comes as a result of ARRA funds will apply to fiscal year 2010.
  - The availability of ARRA funds for spending in fiscal year 2009 will not affect the maintenance of fiscal effort calculation for 2009. If you choose to spend ARRA funds in fiscal year 2009, be sure that the expenditure does not result in a reduction in fiscal year 2009 maintenance of fiscal effort.
  - IDEA includes a provision that allows districts to carry over up to 100% of their current year funds into the ensuing year. In other words, if the district does not expend all of its IDEA, Part B money in fiscal year 2010 (including the funds that have been added to Part B as a result of ARRA), the district has another 12 months to obligate funds.
  - In normal years, we have discouraged any substantial carryover of Part B funds into the carryover year. Fiscal year 2010 is an exception. To effectively manage this sizable increase in federal funds, we encourage the use of the flexibility that comes with the IDEA carryover option. Part B applicants are encouraged to spend ARRA funds across the fiscal years 2010 and 2011.
  - Under certain limited conditions, and subject to the approval of the OPI Division of Special Education, the district may be approved for an additional three months for expanding the funds, provided the district is able to demonstrate that all remaining funds will be obligated for expenditure prior to the September 30, 2011, absolute deadline. If, on or about July 1, 2011, the district is unable to provide sufficient documentation to prove that all remaining Part B funds from fiscal year 2010 will be obligated prior to the September 30, 2011, deadline, unexpended amounts will be re-allocated to other districts.
  - If a district reduces fiscal effort in fiscal year 2010, the new lower threshold becomes the ensuing year's level for maintenance of fiscal effort and remains so until the district increases its expenditure of state and local funds in the ensuing year or years.
  - Maintenance of fiscal effort is determined by the lower of the combination of state and local funds or of local funds. At this point, it would appear unlikely that state funds will increase over fiscal year 2009 amounts. As a result, most districts' fiscal effort determination will be made based on expenditures of local funds.
  - The amount of district general funds available, as a result of a reduction in fiscal effort for special education, must be used to carry out activities that could be supported with Elementary and Secondary Education Act (ESEA) funds regardless of whether the district is using ESEA

- funds. Keep in mind that ESEA funds can be used for most purposes that are allowable for the use of district general funds.
- IDEA includes supplement not supplant provisions. However, the U.S. Department of Education has interpreted that Part B applicants can satisfy these provisions if they maintain fiscal effort. In other words, for IDEA funds only, the basis for determination of supplement not supplant is made through the maintenance of fiscal effort calculation.
- Unless we receive substantial increases in Part B funds, the district will experience a "funding cliff" in two years (fiscal year 2012). This assumes that the district takes full advantage of the carryover provisions by spreading expenditures of ARRA funds across two fiscal years.
- While there is some hope for future increases in the regular Part B allocation, unfortunately we cannot count on it. Long-range budget planning should anticipate a "funding cliff." If the district has the opportunity to place some of the general fund "savings" in its operating reserve for later use by special education, the procedure could reduce budget stressors and could help mitigate the special education draw from the general fund in future years.
- Final determination of fiscal effort is made through expenditure reports. State and local expenditures in fiscal year 2009 will be compared with state and local expenditures in fiscal year 2010. Expenditures in fiscal year 2010 are reported to the state in fiscal year 2011. If there is a failure to maintain fiscal effort, the consequence is then applied in fiscal year 2011. The consequence for the failure to maintain fiscal effort is a district general fund payment to the U.S. Department of Education in the amount equal to the amount the district failed to maintain fiscal effort. Please note that if the district takes full advantage of the 100% carryover option of IDEA, Part B funds, the year of application of the penalty unfortunately occurs in the same year the district would experience the "funding cliff." The bottom line is all districts will need to be exceptionally vigilant with respect to maintenance of fiscal effort requirements.
- Do not underestimate the amount of time and effort necessary to meet the reporting requirements of the ARRA. The application process for ARRA funds is likely to be separate. Among a number of other things, funds will need to be applied for separately, accounted for separately, and we anticipate that quarterly reports on the use of the funds and their impact on employment will need to be filed. In addition, it is likely that we will need to collect information from districts to meet the state's obligation to report on the use of freed-up funds such as those funds that are available for expenditure because of the reduction in maintenance of fiscal effort.

I have enclosed a copy of the code of federal regulations pertaining to maintenance of fiscal effort under the IDEA. If you have further questions, please feel free to call me at (406) 444-4434 or Frank Podobnik at (406) 444-4428.

Enclosure

**§ 300.203 Maintenance of effort.**

(a) *General.* Except as provided in §§ 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) *Standard.* (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

- (i) Local funds only.
- (ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(2)(A))

**§ 300.204 Exception to maintenance of effort.**

Notwithstanding the restriction in § 300.203(a), an LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

- (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- (b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child—

- (1) Has left the jurisdiction of the agency;
- (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
- (3) No longer needs the program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(e) The assumption of cost by the high cost fund operated by the SEA under § 300.704(c).

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(2)(B))

**§ 300.205 Adjustment to local fiscal efforts in certain fiscal years.**

(a) *Amounts in excess.* Notwithstanding § 300.202(a)(2) and (b) and § 300.203(a), and except as provided in paragraph (d) of this section and § 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under § 300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by § 300.203(a) by not more than 50 percent of the amount of that excess.

(b) *Use of amounts to carry out activities under ESEA.* If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

(c) *State prohibition.* Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.

(d) *Special rule.* The amount of funds expended by an LEA for early intervening services under § 300.226 shall count toward the maximum

amount of expenditures that the LEA may reduce under paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(2)(C))

**§ 300.206 Schoolwide programs under title I of the ESEA.**

(a) *General.* Notwithstanding the provisions of §§ 300.202 and 300.203 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed—

(1)(i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by

(ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by

(2) The number of children with disabilities participating in the schoolwide program.

(b) *Funding conditions.* The funds described in paragraph (a) of this section are subject to the following conditions:

(1) The funds must be considered as Federal Part B funds for purposes of the calculations required by § 300.202(a)(2) and (a)(3).

(2) The funds may be used without regard to the requirements of § 300.202(a)(1).

(c) *Meeting other Part B requirements.* Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools—

(1) Receive services in accordance with a properly developed IEP; and

(2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(2)(D))

**§ 300.207 Personnel development.**

The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of § 300.156 (related to personnel qualifications) and section 2122 of the ESEA.

(Approved by the Office of Management and Budget under control number 1820-0600)

(Authority: 20 U.S.C. 1413(a)(3))